Supreme Court, U.S.
FILED

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OCTOBER TERM

NO. 94-

IN THE

**SUPREME COURT OF THE UNITED STATES**

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ROBERT A. LESLIE, Petitioner

v.

DON EDWIN RANEY, Respondent

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# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FOR THE CALIFORNIA STATE SUPREME COURT

## PETITION FOR WRIT OF CERTIORARI

ROBERT A. LESLIE
Consul for petitioner
In Propria Persona
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Irvine, Calif. 92715.
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## QUESTIONS FOR REVIEW

1. Is The decision of the court of appeal to impose a $5000 sanction without notice or hearing a violation of Amendment XIV of the Federal Constitution, and Article I of the California State Constitution?

2. Is the decision of the court of appeal to impose a $5000 sanction without notice or hearing a violation of statutory law?

3. Is The decision of the court of appeal to impose a $5000 sanction without notice or hearing was a violation of case law?

4. Is our home is community property even though the deed states "tenants in common" because it was purchased with community property funds during our marriage, and the deed stated" husband and wife?"

5. Is it is unlawful to partition community property if the spouse's signature is not on the trust deed, in conformity with C. C. §5127?

6. This fact notwithstanding, does the Orange County Superior Court and the court of appeal have the authority to approve the partition and sale of our home in violation of the law, C.C. §5127?

7. Under existing case law the spouse has the right to set aside the sale of our home at any time during our marriage because her signature was on the trust used to foreclose against our home. Does the California Supreme Court have he right to violate this law?

8. Did The Court of Appeal make an error in law, when it determined petitioner's arguments were res judicata, when The issue of community

property has never been addressed by that Court?

9. Did the Court of Appeal make an error in law, by authorizing the partition and sale of our home, before case X642725 could be heard on its merits under the final judgment rule?

10. Did the court of appeal make another error in law by determining the minute order of July 6, 1992, superseded by the NUC PRO TUNC order of July 8, 1992, was an appealable judgment?

10. Did the Court of Appeal make an error in law when it refused to consider case number X642725 on its merits although advised that the NUC PRO TUNC order was not an appealable judgment?

11. Is Denial of Discovery of a client's attorney work product in violation of the law, a violation of the due process clause of Federal Constitution Amendment XIV?

12. Is Judge Thrasher's refusal to allow an expert document examiner testify a trust deed is forged a denial of due process under Federal Constitution Amendment XIV?

**PARTIES TO THE PROCEEDING**

Honorable Thomas Thrasher, Orange County Superior Court, 700 Civic Center Drive West, Santa Ana, California 92701.

Don Edwin Raney, P. O. Box 913, La Quinta, Ca. 92253

Court of Appeal, 927 Splurgeon St., Santa Ana California, 92701.

California State Supreme Court, 300 Spring Street, Los Angeles, Ca. 90012.

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**GROUNDS FOR JURISDICTION**

The Supreme Court of the State of California, denied the petition for review, being the highest court in California, December 19, 1994. Since this decision is in conflict

with the Federal Constitution Amendment XIV, Case and Statutory law and its own opinion, this is submitted for your review to secure uniformity of decision. The jurisdiction of the US Supreme Court to review decisions of the state courts is codified in 28 USC §1257 which reads as follows: (3) by writ of certioriari, where the validity of a treaty or statute of the United States is drawn into question, or the validity of a state statute, is drawn into question on the grounds of it being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specifically set up or claimed under the constitution, treaties, or statutes or commission held or authority exercised under the United States.

Federal Constitution Amendment XIV: Nor Shall any state, deprive and person of life, liberty, or property without due process of law; nor to deny any person within its jurisdiction the equal protection of the laws.

**STATEMENT OF THE CASE**

On or about March 1, 1986 appellant retained and employed Mr. Raney to act as defense consul, in Case M22-54-65, in the Long Beach Municipal Court, and for two appeals following conviction. A $15,000 unsecured note was written to pay for the first appeal, which was not considered because it was not completed timely. A careful analysis of the court transcript, Proposed Engrossed Statement on Appeal, and the Engrossed Statement on appeal actually sent to the reviewing court, revealed defendant had carefully and systematically railroaded plaintiff

into jail for a crime he did not commit, by failing to include many reversible errors in the Engrossed Statement on appeal sent to the reviewing court, and by other methods.

Appellant refused to pay and sued Mr. Raney for malpractice in the Long Beach Superior Court, Case No. SOC96683. Mr. Raney then sent appellant a bill for $47,947.62 for legal services never performed, and foreclosed on the basis of a forged trust deed, improperly acknowledged, and never delivered. The trust deed and promissory note were determined to be forged by the internationally famous document examiner, and professor of document examination at UCLA and USC, Andre McNichol, her report being submitted in evidence at the trial On October 24, 1990. Judge Rylaarsdam rejected her report as hearsay and refused to

reschedule the trial so she could testify.

On appeal, Page 31B, of the May 14 decision stated," The court's minute order indicates that point was resolved against him because he refused to present any admissible evidence, including his own testimony, or the report of his handwriting expert, which would establish that his signature was counterfeit. With that record, he raised no issue here." Judge Rylaarsdam made no such statement in the minute order sent to petitioner. When this decision from the Court of Appeal was received a petition for a rehearing was filed, along with a copy of the reporter's transcript. The reporters transcript shows Judge Rylaarsdam was given the document examiners report, and that petitioner was not invited to testify. The

petition for a rehearing was filed one day late, resulting it its denial, which was unsuccessfully appealed to the California Supreme Court, Civ. no. BO30398. This was an error in law, since the reporters transcript should have been admitted under the doctrine of equitable Estoppel by Fraudulant concealment, petitioner not being put on guard to order a reporter's transcript, until reading the opinion of the Court of Appeal. It should also be noted, Judge Rylaarsdam refused to allow the document examiner to testify in the hearing for reconsideration.

It is also noteworthy that the honorable Judge Crosby perjured himself stating, on B32," Whether Civil Code Section 5127, which generally prevents one spouse from giving a binding encumbrance on Community real property,

has any application to the case is not before us. As mentioned above, there is no indication that Frau Leslie ever appeared in this action and no evidence that this was community property. Leslie did not include his action in the appellate record, and we have no way of knowing if section 5127 was raised as an affirmative defense."

On page 28B of the same decision, Judge Crosby noted," Leslie's own response was to file his own complaint against Raney, Darmiento, Little, and their attorney, Mitchel Ezer, for fraud, recession and money had and received (Super. Ct. Orange County, 1990, No. 62-00-58. Leslie noticed virtually identical motions in each lawsuit to set aside the foreclosure sale, urging Raney forged the promissory note and trust deed. The motions were denied."

This last statement indicated Leslie's original action **was included in the appellate record.** Petitioner overlooked this fact in his previous appeal only observing it while copying the appellate court opinion for this brief.

After receiving notice of the partition action, three unsuccessful attempts were made to set aside the foreclosure sale. Case no. 605416 was appealed to the Court of Appeal, G009651, on the basis of the minute order written by opposing counsel that the action was dismissed with prejudice. Plaintiff never received a copy of the judge's minute order the petition was dismissed without prejudice. Judgment was to appellee, May 14, 1991, on the basis the appeal was premature according to the final judgment rule. Case 620058 was adjudged res judicata to 605416.

Res Judicata is not applicable to X642725 because the first judgment did not address the matter of section §5127. Case X642725, Complaint of Spouse for restoration of community property was awarded to the defendant on the basis of the one year statute of limitations, in CC §5127, both actions being decided by the Honorable Thomas Thrasher, July 25, 1991.

In a petition for reconsideration, October 3, page 1B, The honorable Judge Thrasher changed his ruling from denial with prejudice to denial without prejudice. Petitioner, being unaware that he should file a motion to set aside this judgment, twice appealed it to the court of appeal based on the decision of Byrd v Blanton 149 Cal App 3d at 982. HELD: the one year statute of limitations contained in CC 5127 is not a bar when the transfer

takes placed without the knowledge or consent of the nonsigning spouse, and the transferee has knowledge of the marital relationship. Both times the court of appeal dismissed the appeal as premature because there was no final judgment. A motion to set aside the judgment of dismissal was denied by Judge Thrasher on July 3, 1993, resulting in this appeal.

Secondly, the trustor notarized his own forged trust deed, contrary to Section §8224 of the Government Code, rendering it incapable of being recorded. Because the trust deed was not recorded, it is incapable of rendering constructive notice, which fact is verified by 16 California Supreme Court decisions, and prevents the running of the statute of limitations. This fact is demonstrated by the California State Supreme Court

decision of Lee vs Murphy 119C 364, and confirmed by Middlecroft vs Hemstreet, 135C 173.

Don Edwin Raney never answered suit 620058, and was in default, because he avoided service of process by moving his office of many years and his home of many years, leaving no forwarding address, obviously in the belief the expiration of the one year statute of limitations of CC §5127 would allow transfer of title. He was served with process in X642725 by utilizing the services of a private detective. In suit X642725, Mr. Raney, refused for the eighth time to give a financial accounting. On March 3, 1993, and July 3, 1993, the Honorable Thomas Thrasher denied plaintiff's discovery motion, and a motion for a financial accounting. A financial accounting would have given judgment to plaintiff

because it would prove the trust deed was void for want of consideration, and because it was forged, providing grounds to set aside the forced sale. Moore v Calkins (1890) 85 Cal 177.

**REASON FOR GANTING**

**POINT I**

**The decision of the court of appeal to impose a $5000 sanction without notice or hearing was a violation of Amendment XIV of the Federal Constitution, and Article I of the California State Constitution.** Wolff v McDonnell (1974) 418 US 539, 557-558. HELD: The Court has consistently held that some kind of a hearing is required before a person in finally deprived of his property interests. Fuentes v Shelvin (1972) 407 US 67, 80-81; Mullane v Central Hanover Tr. Co. (1950) 339 US 306,313; Blumenthal v. Superior Court (1980) 103 Cal.App3d 317, 320;



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Hughes v Neth (1978) 80 Cal App 3d. 952, 954.

**POINT II**

**The decision of the court of appeal to impose a $5000 sanction without notice or hearing was a violation of statutory law.** C.C.P. §128.5, added by stats. 1981 ch 762, §1, No. 5 Deering's Adv. Legis. Service p 878. The statute provides that the sanctions cannot be imposed without affording notice and an opportunity to be heard. Yet, this court has violated this law on three different occasions to this litigant, failing to give any basis of this violation of statutory law.

**POINT III**

**The decision of the court of appeal to impose a $5000 sanction without notice or hearing was a violation of case law.**

Re Marriage of Flaharty 31 Cal.3d

637, cited by the Court of Appeal, does not back its opinion. P654 points out, "penalties for prosecuting frivolous appeals should not be imposed without giving fair warning, affording the attorney an opportunity to respond to the charge and holding a hearing." Witkin points out," A fair hearing is a requisite of due process in both civil and criminal cases; hence its denial is an act in excess of jurisdiction. (See Witkin Jurisdiction §234 and seq.,) and is reversible error per se: . . ."

"b. Denial of parties right to testify or offer other evidence: Guardianship of Waite (1939) 14 C 2d. 727,729; Shipley v Shipley (1943) 58 CA 2d.; National Automobile Insurance Company v Fraties (1941) 46 Ca.2d 431,434; Estate of Buchman (1954) 123 Ca.2d 546,559; Jurisdiction §241."

Sanctions seem inappropriate, since under the guidelines of the California State Supreme Court, petitioner is entitled to a reversal: **Under existing case law the spouse has the right to set aside the sale of our home at any time during our marriage because her signature was not on the trust used to foreclose against our home.** Britton v. Hammel(1935) 4Cal.2d 690, 692; Vaughan v. Roberts, 45 Cal.App.2d 246, 259; Harper v Raya (1984) 154 Cal App.3d 908 Andrade Development Co. V Martin 138 Cal App.3d, 330,336; in re Jones (C.D. Cal. 1985 51 Bankr. 834. Droeger v Friedman, Sloan and Ross 54 Cal.3d. 26,37 states," Like the Andrade Court, we conclude that the correct rule is the one that protects each spouse from the unauthorized acts of the other.

**POINT IV**

**Our home is community property even**

**though the deed states "Tenants in Common" because it was purchased with community property funds during our marriage, and the deed stated husband and wife. §CC 4800(2):** "Property acquired by the parties during marriage in joint form, including property held in tenancy in common, joint tenancy, tenancy by the entirety, or as community property is presumed to be community property."

**C.C. §5110:** "If property is obtained by an instrument in which the owners are described as "husband and wife" in the absence of a different intention, the property is presumed to be community property"

**POINT V**

**It is unlawful to partition community property if the spouse's signature is not on the trust deed.** In Droeger vs Friedman, Sloan and Ross, SO10494,

a husband brought an action against the attorneys representing his wife in a dissolution proceedings seeking to quiet title to community property subject to a deed of trust that had been executed by his wife to secure payment of her attorneys fees and costs, without her husbands consent. The trial court sustained her attorneys' demurrer without leave to amend and entered a judgment of dismissal. The court of appeal reversed and the Supreme Court affirmed the judgment of the court of appeal. It held CC §5127 required that both spouses consent to any encumbrance on the community real property, and thus the husband was entitled to void the transaction in its entirety. It also determined this decision was to be applied retroactively, since it merely resolved a conflict in the appellate courts.

**POINT VI**

**This fact notwithstanding, the Orange County Superior Court and the court of appeal approved the partition and sale of our home in violation of the law.** Section CC §5127 states both spouses have to sign any instrument encumbering community property: Britton v. Hammel(1935) 4Cal.2d 690, 692; Vaughan v. Roberts, 45 Cal.App.2d 246, 259; Harper v Raya (1984) 154 Cal App.3d 908; Andrade Development Co. V Martin 138 Cal App.3d 330,336; in re Jones (C.D. Cal. 1985 51 Bankr. 834. Droeger v Friedman, Sloan and Ross 54 Cal.3d. 26,37 states," Like the Andrade Court, we conclude that the correct rule is the one that protects each spouse from the unauthorized acts of the other that may defeat the community interests in the real property."

**POINT VII**

**Under existing case law the spouse has the right to set aside the sale of our home at any time during our marriage because her signature was not on the trust used to foreclose against our home.** Britton v. Hammel(1935) 4Cal.2d 690, 692; Vaughan v. Roberts, 45 Cal.App.2d 246, 259; Harper v Raya (1984) 154 Cal App.3d 908; Andrade Development Co. V Martin 138 Cal App.3d, 330,336; in re Jones (C.D. Cal. 1985 51 Bankr. 834. Droeger v Friedman, Sloan and Ross 54 Cal.3d. 26,37 states," Like the Andrade Court, we conclude that the correct rule is the one that protects each spouse from the unauthorized acts of the other that may defeat the community interests in the real property."

The lower courts refusal to grant the spouses demand for restoration

of her community property is in violation of the equal protection clause of amendment XIV of the Federal constitution, and the authority of the California Supreme Court.

**POINT VIII**

**The Court of Appeal made an error in law, when it determined petitioner's arguments were res judicata, when The issue of community property has never been addressed by that Court.** Judgment of the court of appeal, page 32B, "Whether Civil Code section 5127, which generally prevents one spouse from giving a binding encumbrance on community real property has any application to the case is not before us. As mentioned above, there is no indication Mrs. Leslie ever appeared in this action, and no evidence this is community property. Leslie did not include his answer in the appellate

record, and we have no way of knowing if section 5127 was raised as an affirmative defense. After the trial in this case, Leslie's spouse sued Raney (Lynette Leslie v Don Edwin Raney X642725) but not Darmiento or Little to cancel the deed on the basis it was delivered without her knowledge or consent. The status of that lawsuit is unknown to us."

The honorable Judge Thrasher also erred when he gave res judicata as a reason that the document examiner should not be allowed to testify the original trust deed was forged, since opposing counsel was not a party to the action when this determination was made. In Maryland Casualty Co. v Henderson Memorial Hospital 132 P2d. 640 (1940) the second district held "The doctrine of res judicata does not apply in actions or proceedings

where the parties are not identical or the issues are not the same." In Re Watkin's Estate 104 p2d 394; in Wheeling v City and County of San Francisco 52 Cal App 2d 363. Res judicata also does not apply if a different right or title or obligation is pleaded in a separate action. This action pleads community property, which was excluded from the previous action: Owl Drug Co. v Bryant 115 CA 2d 296. This fact was given by oral argument, 4B-5B and ignored by the court of appeal.

**POINT IX**

**The Court of Appeal made an error in law by authorizing the partition and sale of our home before case X642725 could be heard on its merits under the final judgment rule.** Judgment of the court of appeal, page 32B-33B, " Whether Civil Code section 5127,

which generally prevents one spouse from giving a binding encumbrance on community real property has any application to the case is not before us. As mentioned above, there is no indication Mrs. Leslie ever appeared in this action, and no evidence this is community property. Leslie did not include his answer in the appellate record, and we have no way of knowing if section 5127 was raised as an affirmative defense. After the trial in this case, Leslie's spouse sued Raney (Lynette Leslie v Don Edwin Raney, X642725) but not Darmiento or Little to cancel the deed on the basis it was delivered without her knowledge or consent. The status of that lawsuit is unknown to us."

Witkin points out in Appeal §44 regarding C.C.P 904.2 . . . "The intent of such statutes is to codify **the final**

**judgment rule** or the rule of one final judgment, a fundamental principle of appellate practice in the United States. The theory is that piecemeal disposition and multiple appeals in a single action would be oppressive and costly, and that a review of intermediate rulings should await the final disposition of the case. See Bank of America vs. Superior court (1942) 20 C.2d 697,701; Brown vs. Memorial Home Foundation (1958) 158 C.A.2D 448,455; Murphy vs. Fong Shuck (1957) 151 C.A.2d 64,65; Efron v Kalamanovitz 1960) 185 C.A.2d 149,154, and eight other citations.

**POINT X**

**The court of appeal made another error in law by determining the order of July 6, 1992, superseded by the NUC PRO TUNC order of July 8, 1992, was an appealable judgment.** Witkin, in Appeal §44 states," Fourth, the

judgment must be subsisting; a superseded judgment is not appealable." Rutledge v Rutledge (1953) 119 C.A.2d 112; Neff v Ernst 48 C.2d 628,634; Kelly v Sparling Water Co. (1959) 52 C.2d 628,632; Appellant filed appeal, GO 12845, on the basis of the hearing of June 12, 1992, and abandoned the appeal on the basis of this NUC PRO TUNC order, page B1.

The pertinent part of this order revised states, "A motion for reconsideration was filed by the plaintiff on July 29, 1991, and was heard on October 3, 1991, at which time the motion for reconsideration was denied without prejudice. Therefore, the Court, on its own motion orders that the above case is dismissed without prejudice."

The decision of the Court of Appeal, Page 13B, states, "The signed minute

Order of July 6, 1992 constituted an appealable judgment." Under the NUC PRO TUNC order, of July 8, appellant was free to bring up the matter at any time within five years of the filing of the lawsuit, and was not a final judgment within the meaning of CCP 581d: Oeth v Mason 247 Cal.App .2d 805,810; Gonsalves v Bank of America, 16 Cal.2d 169; Goddard v Security Title Ins. & Guarantee Co. 14 Cal.2d 47; Lord v Garland 27 Cal.2d 840,850.; Brunswick Corp. v. Chrysler Corp., D. C. Wis., 287 F.Supp 776, 777; Winter Garden Land Co. v Barlow v Hoffmann, 86 P2d. 239,241; Gerlach v School District of Little Beaver Tp.,180 A 756; Northrup v Jay, 247 N. W.717.

The decision states, page 13B, "A minute order signed by the court on July 6, 1992 dismissed the action." This is contrary to C.C.P. 581d, which formerly permitted the alternatives of minute

of minute entry, or signed order, was amended in 1963 to state that, "All dismissals ordered by the court **shall be in the form of a written order signed by the court and filed** in the action or in the docket in the justice court." Witkin Proceedings Without Trial §84. No such written order was rendered by the honorable Judge Thrasher either to appellant or in the clerk's transcript.

This fact is further demonstrated by the fact motions for Discovery, Summary Judgment, and for setting aside the judgment of dismissal were acted upon by the Honorable Judge Thrasher after the NUC PRO TUNC order was signed, indicating this judgment was not final.

**POINT XI**

**The Court of Appeal made an error in law when it refused to consider case number X642725 on its merits although**

**advised the Pro Nuc Tunc order was not an appealable judgment.**

C.C.P §1005. Craven v Crout 163 CA 3d 779 HELD": The court retains a motion to vacate a judgment and enter a judgment for two reasons, namely, an incorrect or erroneous legal basis for decision, . . ." It is also a violation of the "due process" clause of Federal Constitution XIV, since it discriminates against litigants who live in districts which enforce Droeger, it violates the equal protection clause of Federal Constitution Amendment XIV.

**POINT XII**

**Denial of Discovery of a client's attorney work product in violation of the law, is a violation of the due process clause of Federal Constitution Amendment XIV.**

Judge Thrasher refuses to sign a discovery order or authorize a financial accounting even though appellant is entitled to this as a matter of law:

The relationship between attorney and client is fiduciary and of the highest character: Neal v Magna, Olney, Cachcart & Golfund (1971) 6 C.3d, 176,188. Griffith v Zalvaris 6C.3d 186,188, points out regarding the attorney client relationship," **The relationship is fiduciary and calls for full disclosure."** See also California Optometrists v. Superior Court (1975) 51 Cal App.3d. 999; Weiss v Marcus 51 Cal App.3d 590.

Yet Judge Thrasher refuses to grant a discovery order for these papers, He also fails to cite the legal theory that allows an attorney to steal $30,000 of his client's money by fraudulent billings, or to steal a clients home by means of a forged trust deed. Embezzlement of client funds is a felony and by refusing to act Judge

Thrasher is concealing a crime.

**POINT XIII**

**12. Judge Thrasher's refusal to allow an expert document examiner testify a trust deed is forged is a denial of due process under Federal Constitution Amendment XIV.** d. Exclusion of admissible expert testimony may be reversible error: Lunghi v. Clark Equipment Co. (1984) 153 Ca.3d 485,490; Loftledir Icelandic Airlines v McConnell Douglas.

**CONCLUSION**

The decision of the Court of Appeal, page 13B, states, "the signed minute order of July 1992 constituted an appealable judgment." Petitioner disputes this for the reasons given in issue number VII. Petitioner received no notice of the entry of judgment from the Superior Court. He did receive a NUC PRO TUNC order which was not a final judgment. Even if the court of appeal were correct

this error in law hardly justifies a $5000 sanction imposed without notice or hearing in violation of the principal of public access to the courts.

The decision of the Court of Appeal notes, on page 15B," The legal arguments asserted by Leslie are the same ones he made in countless previous lawsuits. They consistently have been rejected by the Superior Court and this Court." This is correct. However, these two courts have consistently refused to consider petitioner's § CC 5127 claim on its merits.

More importantly, the decisions of these two courts conflict with the California State Supreme Court Decision of Droeger v Friedman, Sloan and Ross 54 Cal.3d. 26,37 states," Like the Andrade Court, we conclude that the correct rule is the one that protects each spouse from the unauthorized acts


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that may defeat the community interests in the real property." **Under existing case law the spouse has the right to set aside the sale of our home at any time during our marriage because her signature was not on the trust used to foreclose against our home.** Britton v. Hammel(1935) 4Cal.2d 690, 692; Vaughan v. Roberts, 45 Cal.App.2d 246, 259; Harper v Raya (1984) 154 Cal App.3d 908 Andrade Development Co. V Martin 138 Cal App.3d, 330,336; in re Jones (C.D. Cal. 1985 51 Bankr. 834. Droeger v Friedman, Sloan and Ross 54 Cal.3d. 26,37 states, "Like the Andrade Court, we conclude that the correct rule is the one that protects each spouse from the unauthorized acts of the other that may defeat the community interests in the real property."

The Court of Appeal Decision states, on page 14B," Any reasonable attorney would conclude the effort in this appeal

to gain review of a judgment that was long final lacks any merit." This statement is incorrect for two reasons: 1. A superseded judgment not entered in the court records is not appealable; appellant is being unjustly penalized because of the appellate court's lack of familiarity with the law. 2. The appeal has merit. Judge Thrasher refused to sign the judgment. The right honorable Malcolm Lucas, Chief Justice of the California State Supreme Court, believes this appeal has merit, along with Associate Judges J. Panelli, C. J. Mosk, Broussard, Araban and Baxter, J. as demonstrated by page 36 of this brief. The actions of the lower courts, in denying the authority of the Federal Constitution, California State Supreme Court, and the law, is in violation of the due process and equal protection clauses

to the Federal Constitution.

**WHEREFORE**, appellant respectfully requests that this court grant this petition for review and order that the within appeal be transferred to it, or alternatively, restore our community property and revoke the sanctions unlawfully taxed by the court of Appeal without notice or hearing.

Respectfully submitted,

Robert A. Leslie

Robert A. Leslie
In Pro per:

**VERIFICATION**

I, Robert A. Leslie am the petitioner and have prepared this petition for certioriari. The information contained therein is true of my own personal knowledge. I declare under penalty of perjury the foregoing is correct. Dated December 27, 1994, at Irvine, California.

Robert A. Leslie
Robert A. Leslie

# APPENDIX

**NUC PRO TUNC dated July 8, 1992. X642725**

**ROBERT A. LESLIE V DON EDWIN RANEY ORANGE COUNTY SUPERIOR COURT MINUTE ORDER THOMAS THRASHER JUDGE:** A motion for reconsideration was filed by the plaintiff on July 29, 1991, and was heard on October 3, 1991, at which time the motion for reconsideration was denied without prejudice. Therfore, the Court, on its own motion orders that the above case is dismissed without prejudice."

**ORAL ARGUMENT PRESENTED TO THE COURT OF APPEAL FOURTH APPELLATE DISTRICT DIVISION THREE September 16, 1994.**

**ROBERT A. LESLIE V DON EDWIN RANEY** The honorable Judge Thrasher dismissed this complaint on the basis that the one year statute of limitations had elapsed under CC §5127, making an error in law on three grounds: 1. Equitable Estoppel by Fraudulent Concealment. 2. The one year statute of limitations does not apply if the

parties are aware of the marital relationship as described in Byrd v Blanton, the author of this decision is now present in this court, and 3. because the trustor notarized his own trust deed in violation of Government code §8224, preventing the deed from being recorded, preventing the running of the statute of limitations.

Equitable estoppel applies in this case since action 642725 could not be filed within the prescribed period because opposing counsel repeatedly dodged the process server by moving his home twice without leaving a forwarding address, and moving his office, refusing to allow his answering service to leave a forwarding address, refusing to accept any new clients, or some old clients, and requiring the services of a private detective to locate him. Affidavits to this effect are in your files. Even after he was located, opposing counsel has many times followed this practice.

Dismissal is precluded because the honorable Judge Thrasher is improperly attempting to resolve fact issues in his decision this action is time barred by the statute of limitations. It is sufficient for the plaintiff to allege facts which if proved, would constitute an estoppel. Once properly alleged, the issue of estoppel is to be tested through the trial process, as pointed out in the following authorities: Albers vs, County of Los Angeles 62 C.2d 250, 256; Lowe v Copeland 125 Cal App. 322; Consolidated Mtge. Co. c Roberts 108 CA2d. 68; Goldstein v. McNeal 122 VA2d. 612; Sawyer v. City of San Diego 138 CA2d. 662; Dept. of Mental Hygiene v Lucas 243 CA.2d 466 decisions.

Reference was made in the briefs to the fact the honorable Judge Ryaalsdam perjured himself by issuing a false minute order the appellant refused to testify

to your court, simultaneously issuing a different minute order to appellant, in case 604516, so he was not put on guard to order a reporter's transcript. This court refused to reconsider the matter on the basis that the petition for reconsideration, with the reporters transcript was filed one day late, committing an error in law, since equitable estoppel by fraudulent concealment precludes dismissal on these grounds.

The honorable Judge Thrasher also erred when he gave res judicata as a reason that the document examiner should not be allowed to testify the original trust deed was forged, since opposing counsel was not a party to the action when this determination was made. In Maryland Casualty Co. v Henderson Memorial Hospital 132 P2d. 640 (1940) the second district held "The doctrine of res judicata does

not apply in actions or proceedings where the parties are not identical or the issues are not the same." In Re Watkin's Estate 104 p2d 394, and in Wheeling v City and County of San Francisco 52 Cal App 2d 363 the court made the same determination.

Res judicata also does not apply if a different right or title or obligation is pleaded in a separate action. This action pleads community property, which was excluded from the previous action: Ideal Hardware etc. v Department of Employment 114 CA 2d 443; Owl Drug Co. v Bryant 115 CA 2d 296.

JUDGE THRASHER DENIED APPELLANT DUE PROCESS

A fair hearing is a requisite of due process in both civil and criminal cases; hence its denial is an act in excess of jurisdiction. (See Witkin Jurisdiction §234 and seq.,) and is reversible error:

a. Striking out proper pleadings: People v Lagiss (1958) 160 CA.2d 28,32; Witkin Jurisdiction §240; Gleeson v Dunn (1931) 113 CA 347,351; Aldabe v Aldabe (1962) 209 CA.2d 453,457; Clifton v Ulis (1976) 17C 3. 99,105. The honorable Judge Thrasher is doing this by ignoring the issued of equitable estoppel, the decision of Byrd v Blanton, and the documentary evidence of the Los Angeles County Bar Association.

b. Denial of parties right to testify or offer other evidence: Guardianship of Waite (1939) 14 C 2d. 727,729; Shipley v Shipley (1943) 58 CA 2d. 174,175; Fewel v Fewel (1943) 23 C2d. 431,434; National Automobile Insurance Company v Fraties (1941) 46 Ca.2d 431,434; Estate of Buchman (1954) 123 Ca.2d 546,559; Jurisdiction §241. Judge Thrasher is doing this by refusing to schedule a trial so the expert may testify the underlying trust deed

is forged, or to grant a discovery order.

c. Exclusion of material evidence on a material issue: California Home Extension Assn. v Hilborn (1951) 37C.2d 459,465; Boyle v Boyle (1946) 76 CA.2d 344,346; Schubekegel v Gordino (1943) 56 Ca.2d 667,673; Mashbir v. Mashbir (1938) 29 Ca.2d 722,734; Longuy v La Society Francaise (1921) 52 CA 370,376. Judge Thrasher is doing this by ignoring the documentary evidence of a $30,000 shortfall between billed legal services and provided legal services which was acknowledged in Mr. Raney's letter.

d. Exclusion of admissible expert testimony may be reversible error: Lunghi v. Clark Equipment Co. (1984) 153 Ca.3d 485,490; Loftledir Icelandic Airlines v McConnell Douglas.

Purported entry of judgment without findings in a case requiring them is reversible error: Englemen v Green (1954)

125 CA.2d 843,847, See Trial §368 et. seq. Judge Thrasher's error in law is evident: He refuses a trial; he refuses to give a final judgment so the case may be appealed, leaving the case in limbo. Similarly he refuses to sign a judgment, or grant a discovery order.

Judge Thrasher refuses to sign a discovery order or authorize a financial accounting even though appellant is entitled to this as a matter of law: The relationship between attorney and client is fiduciary and of the highest character: Neal v Magna, Olney, Cachcart & Golfund (1971) 6 C.3d, 176,188. Griffith v Zalvaris 6C.3d 186,188, points out regarding the attorney client relationship," **The relationship is fiduciary and calls for full disclosure."** See also California Optometrists v. Superior Court (1975) 51 Cal App.3d. 999; Weiss v Marcus 51 Cal App.3d 590.

Yet Judge Thrasher refuses to grant a discovery order for these papers, and gives no legal basis for his refusal to enforce this rule, or for a financial accounting. He also fails to cite the legal theory that allows an attorney to steal $30,000 of his client's money by fraudulent billings, or to steal a clients home by means of a forged trust deed. Embezzlement of client funds is a felony and by refusing to act Judge Thrasher is concealing a crime.

Appellant's criminal conviction is now before the ninth circuit court in San Francisco, and appellant is hampered in his presentation because defense counsel removed his pleadings from file, M 22-54-65, after being sued for legal malpractice, and has refused to produce them, even though appellant is entitled to these pleadings under the state bar rules 3-700 (d). A discovery order

would be most welcome. This latest motion before the circuit court leaves no doubt he railroaded appellant into jail for a crime he did not commit, as the latest motion demonstrates. Such behavior is supposed to be a criminal offense in its own right.

ATTORNEY'S LACK OF RESPECT FOR THE LAW

In Case SOC 90729, Halper v Raney, opposing counsel forged a clients name to a retainer agreement without his client's consent, representing it to be genuine, to the escrow holder, when the client disagreed with his legal fees, and apparently follows similar practices in all fee disputes, as is the case here where he forged the client's name to a trust deed, and foreclosed against it. Neither Judge Thrasher or opposing counsel cited the legal theory supporting this practice.

A newspaper article in the July 17,

1994, issue of the Los Angeles times states fraud on the part of attorneys to their clients is a widespread practice, yet Judge Thrasher deplores the fact the public lacks confidence in the judiciary. **DECISION OF THE COURT OF APPEAL, GO14514, ROBERT A. LESLIE vs. DON EDWIN RANEY, September 29, 1994:** The historical and procedural facts underlying the long-running dispute between Robert A. Leslie and various individuals concerning the loss of his interest in his home after a foreclosure sale are recounted in earlier decisions of this court. (See Appendix.) Leslie now challenges the lower court's denial of his motion to set aside a judgment of dismissal. We affirm. This appellate record is skimpy, and the briefs on both sides are unenlightening. Our persusal of the superior court file gleans the following: This action was filed on

November 28, 1990, by Robert and Lynette Leslie. Raney's demurrer was sustained without leave to amend on July 25, 1991. The order itself was not a final judgment and not appealable, so Leslie's premature appeal was dismissed in an unpublished opinion filed March 27, 1992 (GO11612) Within days of the issuance of this court's opinion, Leslie moved for summary judgment. On June 18, 1992 The Superior Court continued the hearing date for this motion. Leslie purported to appeal from the minute order (GO12845) but voluntarily abandoned that challenge. In the meantime the superior court denied Leslie's motion for summary judgment as moot; and a minute order signed by the court on July 6, 1992, dismissed the action. The clerk's certificate of mailing establishes that Leslie and Raney were served with copies of the minute order on the same date.


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The parties were back in the superior court on a variety of cross motions, including one by Leslie for summary judgment and to set aside the dismissal. Both were denied on July 1, 1993; and five days later Leslie noticed the current appeal, attacking the denial of "The motion to set aside the judgment."

The signed minute order of July 1992 constituted an appealable judgment. (Code Civ. Proc., §581d.) The clerk of the court gave notice of entry of judgment, and any appeal was required to be filed within 60 days. (Cal. Rules of Court, rule 2.) None was. Almost one year after the judgment was entered, Leslie moved to set it aside, arguing only that the trial court's judgment conflicted with controlling case law. He cited no extrinsic fraud or other excuse for waiting almost eleven months before filing his motion. Now, in the

guise of appealing from the denial of his motion to set aside the judgment, he really seeks appellate review on the merits of the long final judgment. This he cannot do.

Raney seeks sanctions for a frivolous appeal. (Code Civ. Proc., §907.) They are warranted Any reasonable attorney would conclude the effort in this appeal to gain review of a judgment that was long final lacks any merit.

More to the point, however, the legal arguments asserted by Leslie are the same ones he unsuccessfully made in previous lawsuits. They constantly have been rejected by the superior court and this court. The legislature has determined that litigants who refuse to acknowledge and accept judicial defeat and insist on consuming scarce judicial resources in frivolous efforts to revive moribund legal disputes may be classified

as vexatious. (Code Civ. Proc. §391 et seq.)

This opinion shall serve notice to Leslie that should we be presented with yet another appeal where only the same, tired issues are raised, this court will institute the necessary procedures to determine whether his quixotic journey through the legal system qualifies his as a vexatious litigant. We have sanctioned leslie in small amounts for flogging this moribund steed, to no avail. Now sanctions of $5000 are appropriate for prosecuting this frivolous appeal. (In re Marriage of Flaherty (1982) 31 Cal.3d 637, 649.)

The order is affirmed. Leslie shall pay $5,000 in sanctions to Raney, and Raney shall also receive his costs on appeal.

**PETITION FOR RECONSIDERATION FILED October 1, 1994 FOURTH DISTRICT,DIVISION THREE**

**V RANEY, GO14514, JUDGES SILLS, CROSBY, SOENSHINE.** Petitioner respectfully requests a rehearing on the basis that your decision of September 29 contains a number of errors of law and fact: The decision states," A minute order signed by the court on July 6, 1992 dismissed the action." This is contrary to C.C.P. 581d, which formerly permitted the alternatives of minute entry, or signed order, was amended in 1963 to state that," All dismissals ordered by the court **shall be in the form of a written order signed by the court and filed** in the action or in the docket in the justice court." Witkin Proceedings Without Trial §84. No such written order was rendered by the honorable Judge Thrasher either to appellant or in the clerk's transcript. The decision of the Court of Appeal next states on page two, "that Leslie and Raney were served with copies of

the Minute order of July 6, 1992, on that date." Appellant never received a copy of this minute order. Appellant did receive a revised decision of the Honorable Judge Thrasher in the form of a NUC PRO TUNC order which is hereby appended as EXHIBIT A, dated July 8, 1992. Appellant filed Appeal, GO 12845, on the basis of the hearing of June 12, 1992, and abandoned the appeal on the basis of this NUC PRO TUNC order.

The pertinent part of this order states, "A motion for reconsideration was filed by the plaintiff on July 29, 1991, and was heard on October 3, 1991, at which time the motion for reconsideration was denied without prejudice. Therefore, the Court, on its own motion orders that the above case is dismissed without prejudice."

The decision of the Court of Appeal on page three paragraph II states "The

signed minute order of July 1992 constituted an appealable judgment." This is incorrect for the reasons mentioned in page 16B of this petition, and because under the NUC PRO TUNC order, appellant was free to bring up the matter at any time within five years of the filing of the lawsuit, and was not a final judgment within the meaning of CCP 581d: Brunswick Corp. v. Chrysler Corp., D. C. Wis., 287 F.Supp 776, 777; Winter Garden Land Co. v Zavalladimmit Counties Water Improvement District. No. 1, 5 S.W.2d 606, 609; Barlow v Hoffmann, 86 P2d. 239,241; Gerlach v School District of Little Beaver Tp.,180 A 756; Northrup v Jay, 247 N. W.717. The final judgment rule states, a case cannot be appealed until a final judgment is reached. C.C.P. 904.1a provides, an appeal may be taken," from a final entry entered in an action or a special

proceeding (citations). Since plaintiff was free to bring up the matter again in a dismissal without prejudice, no final judgment was reached and the decision was not appealable. This was pointed out in the final paragraph on page three of appellant's opening brief: Bank of America v Superior Court (1942) 20C2d 697, 701; Brown v Memorial Nat. Home Foundation (1958) 158 CA2d. 448,455; Murphy v Fong Shuck (1957) 151 C.A.2D. 64,65; Efron v Kalamonvitz; Maier Brewing Co. v Pacific Nat. First Insurance Co.; and 15 other citations. Witkin Appeal §43.

It is noteworthy that the honorable Judge Thrasher **refused to sign a judgment** July 1993, even though one was prepared by opposing counsel, reflecting his doubt regarding a dismissal, which was why his decision was appealed. The appellate court, which awarded sanctions of $500

for filing a frivolous appeal GOO9651, now awards $5000 sanctions for failing to file a frivolous appeal.

A third reason the judgment of dismissal is in error is that it Conflicts with the Decision of the California State Supreme Court decision of Droeger v. Friedman, Sloan and Ross, SO14983, p36 points out," Equally recent decisions, including the court of appeal decision in this case, expressly disapprove of the Mitchell line of authority, and hold **if relief is sought during marriage, the entire transfer should be set aside.** Harper vs. Raya (1984) 154 Cal App.3d 908; Andrade development Co v. Martin 138 Cal. App.3d. 330; Waldeck v Heddan 89 Cal App 485 491-492. In Re Jones (C. D. Cal 1985). The California State Supreme Court in Droeger ratified these decisions, and the decision of the Court of Appeal gave no legal authority to

set aside this decision of the California State Supreme Court, or the principal of stare decisus. There is no limitation of action, according to Droeger, since we are still married.

In summary, this decision of the Court of Appeal in 14514 is in conflict with C. C. P. 581d, the NUC PRO TUNC order signed by the Honorable Thomas Thrasher, July 8, 1992, The Final Judgment Rule in C.C.P. 904.1a, and its supporting case law, and the opinion of the California State Supreme Court in Droeger vs Friedman Sloan and Ross and its supporting case law.

The United States Supreme court points out in Anders v California (1967) 368 US 738,744 HELD: an appeal is not frivolous if any of the legal points [are] arguable on their merits. See also Estate of Walters (1950) 99 Cal App 2d. 552,558; Kunza v Gaskell (1979)

91 Cal App.3d 201,211 "As a reasonable person he could not conceivably have anticipated a successful appeal."

Notwithstanding this lack of legal authority, the Court of Appeal awards $5000 sanctions for a frivolous appeal, which is also in conflict with statute and case law. The cited authority is Re Marriage of Flaharty 31 Cal.3d 637, which does not back the opinion of the court of Appeal. P654 points out," Penalties for prosecuting frivolous appeals should not be imposed without giving fair warning, affording the attorney an opportunity to respond to the charge and holding a hearing." This, the Court of appeal has refused to do in conflict with this citation. "Further, when imposing sanctions, the court should provide the attorney with a written statement of the reasons for the penalty C.C.P §128.5, requiring notice, an

opportunity to be heard, and a written order reciting "in detail" the circumstances justifying the sanction." This has not been done either. As imposed by this court, such sanctions are also in violation of the due process clause of amendment XIV of the Federal Constitution: Wolff v McDonnell (1974) 418 US 539, 557-558. HELD: The Court has consistently held that some kind of a hearing is required before a person in finally deprived of his property interests. Fuentes v Shelvin (1972) 407 US 67, 80-81; Mullane v Central Hanover Tr. Co. (1950) 339 US 306,313; Blumenthal v. Superior Court (1980) 103 Cal.App3d 317, 320; Hughes v Neth (1978) 80 Cal App 3d. 952, 954.

The sanctions are also in violation of statutory law. In 1981, the legislature amended the Code of Civil Procedure to authorize trial courts to

impose fines on a party of attorney, including attorney fees, as a sanction for actions taken in bad faith . . . C.C.P. §128.5, added by stats. 1981 ch 762, §1, No. 5 Deering's Adv. Legis. Service p 878. The statute provides that the sanctions cannot be imposed without affording notice and an opportunity to be heard. Yet, this court has violated this law on three different occasions to this litigant, failing to give any basis of this violation of statutory law.

Paragraph III, page three states," Any reasonable attorney would conclude the effort in this appeal to gain review of a judgment that was long final lacks any merit." This statement is incorrect. Judge Thrasher thought the appeal had merit which is the reason he refused to sign the judgment. The right honorable Malcolm Lucas, Chief Justice of the

to sign the judgment. The right honorable Malcolm Lucas, Chief Justice of the California State Supreme Court, believes this appeal has merit for the reasons outlined in page 20 B of this brief. Furthermore, appellant disputes the finality of the judgment. It also states," The arguments asserted by Leslie are the same ones he unsuccessfully made in countless previous lawsuits." This statement is also incorrect. The judgment of the court of appeal, page 32B, "Whether Civil Code section 5127, which generally prevents one spouse from giving a binding encumbrance on community real property has any application to the case is not before us." Thus, this court refused to consider the arguments of this case, which is the reason it was brought as a second action. The US Supreme court points out in Fay v Noia 372 US 391.

" (b) Due process denied in state

proceedings . . . is not restored because a state court declines to adjudicate on the merits the claim of such denial."

Appellant intends to continue his litigation until he finds a court willing to adjudicate his claim for community property on its merits. Appellant requests a reversal, with restoration of our community property. **OCTOBER 10, 1994 in ROBERT A.LESLIE V DON EDWIN RANEY, GO14514 THE CALIFORNIA COURT OF APPEAL FOURTH DISTRICT DIVISION THREE DENIED APPELLANT'S PETITION FOR A REHEARING.JUDGES J. SILLS, CROSBY AND SHOENSHINE. DECEMBER 19, 1994, THE CALIFORNIA STATE SUPREME COURT ACTING IN BANK DENIED APPELLANT'S PETITION FOR REVIEW, in ROBERT A.LESLIE vs DON EDWIN RANEY SO49273. DECISION OF THE COURT OF APPEAL FILED MAY 14, 1991.LESLIE v DARMIENTO et. al. GO 10296 and GO 9651: JUDGES SILLS, CROSBY,J. MOORE:** Frank Darmiento and


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William Little purchased an undivided one-half interest in Robert Leslie's Laguna Beach home at a foreclosure sale September 29, 1989, and became tenants in common with Leslie's wife, the owner of the second half. Leslie unsuccessfully challenged the foreclosure sale. Darmiento and little successfully sued to quiet title and partition and sell the property. We find no error and award sanctions for a frivolous appeal. (GO09651).

As best we can discern from the briefs and clerk's transcript, Leslie was represented in several criminal and civil actions by attorney Raney. He allegedly gave Raney several promissory notes, secured by separate trust deeds on the house he shared as tenant in common with his wife. Leslie defaulted on a $20,342 note, and Raney opted to exercise the power of sale contained in the most junior lien. Darmiento and Little purchased

Leslie's interest at the trustee's sale for $71,100, subject to three senior liens. They sued the Leslie's to quiet title, to force a sale of the property, and for ejectment (Super. ct. Orange County, 1989, N. 60-54-16). There is no record Mrs. Leslie ever made an appearance in this action. Leslie's own response was to file his own complaint against Raney, Darmiento, Little, and their attorney, Mitchel Ezer, for fraud, recession and money had and received (Super. Ct. Orange County, 1990, No. 62-00-58.)

Leslie noticed virtually identical motions in each lawsuit to set aside the foreclosure sale, urging Raney forged the promissory note and trust deed. The motions were denied. The action prosecuted by Darmiento and Little proceeded to trial, and the court quieted title and plaintiffs and ordered the property sold. Judgment was in Leslie's


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favor on the cause for action on ejectment.

Despite Leslie's protestations to the contrary, no final judgment has been entered in the action he is prosecuting. Just several months ago the superior court stayed proceedings in that matter pending these appeals. We consolidated the two appeals on our own motion. As the order denying Leslie's motion is not independently appealable, GO9651 must be dismissed. Code Civ. Proc. §904.1; see Jasper Constr., v. University Casework Systems, INC. (1974) 39 Cal.App.3d 582, 585.) We agree that appeal is frivolous, and we award respondents sanctions. We find no error in GO10296 and affirm the judgment.

Leslie raises numerous contentions in GO10296, primarily relating to the alleged forgery of the trust deed, Raney's improper notarization of the deed and

the alleged lack of consideration for the notes. He failed to request a statement of decision, however; and in its absence," (a) judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters to which the record is silent, and error must be affirmatively shown. This is not only a general principal of appellate practice but an ingredient of the constitutional doctrine of reversible error." (9 Witkin, Cal.Procedure (3d ed. 1985) Appeal, § 268, p.276; see also in re Marriage of Arceneaux (1990) 51 Cal.3d 1130, 1133.

Leslie's reliance on the clerks transcript alone forecloses other avenues of review: "(O)n a clerk's transcript appeal the appellate court must conclusively presume that the evidence is ample to sustain the findings, and

the only questions presented are as to the sufficiency of the pleadings or whether the findings support the judgment," (Kompf v Morrison (1946) 73 Cal.App.2d 284, 286; See also Cal. Rules of Court, Rule 52.) In fact, the clerks transcript is particularly damaging to Leslie on the issue of the alleged forgery. The court's minute order indicated that point was resolved against him because he refused to present any admissible evidence, including his own testimony or the report of the handwriting expert, which would establish that his signature was counterfeit. With that record he raised no issue here.

Citing the Code of Civil Procedure section 872.210, subdivision (b) Leslie contends the partition action is prohibited. That section provides, "an action between spouses or putative spouses for partition of their community property

or quasi community property or their quasi marital interest in property may not be commenced or maintained under this title." Neither Darmiento or Little is married to Mrs. Leslie, however, and the property was held between the spouses as tenants in common. Section 872.210 subdivision (b) thus had no conceivable application to this matter.

Whether Civil Code Section 5127, which generally prevents one spouse from giving a binding encumbrance on Community real property, has any application to the case is not before us. As mentioned above, there is no indication that Frau Leslie ever appeared in this action and no evidence that this was community property. Leslie did not include his action in the appellate record, and we have no way of knowing if section 5127 was raised as an affirmative defense. After the trial in this case, Leslie's

spouse sued Raney (Lynette Leslie v. Don Edwin Raney, super. ct. Orange County, 1990, No. X-642725-- But not Darmiento or Little--to cancel the deed on the basis it was delivered without her knowledge or consent. The status of that lawsuit is unknown to us.

The Leslie's homestead declaration, recorded November 6, 1989, did not preclude partition. The homestead was recorded after the trust deed. Also Leslie did not own the property when he declared the homestead, and his wife has not appealed. Even if she had, her homestead right would not prevent partition. (See young v. Hessler (1945) 72 Cal.App.2d 67, 69.)

Leslie also argues that Raney was an indispensable party to the action filed by Darmiento ands Little. (Code civ. Proc., §389.) Not so. Raney may have been a material witness, but his absence

from the Darmiento and Little lawsuit did not preclude complete relief between the parties or potentially impair Leslie's rights because Raney had no interest in the property after the trustee's sale.

Leslie also complains that discovery was not completed by the time of trial. But nothing indicates the parties every, conducted any formal discovery or wished to do so. Nor is there any record of an objection to the commencement of trial. It is too late to launch this attack: "It is generally considered unfair to the trial court and the adverse party to consider procedural defects that could have been raised below but were not." (Menefee v., County of Fresno (1985) 163 Cal.App.3d 1175, 1182.)

Darmiento, Little, and Ezer request sanctions in GO09651. (Code of Civ. Proc., §907.) The order is patently nonappealable, and no reasonable attorney

could conclude otherwise. We presume that is one reason the trial court waited eight months after the notice of appeal was filed before finally suspending proceedings.

Sanctions are clearly appropriate, although the appeal should not have been costly to Leslie's adversaries. Darmiento, Little, and EZER could have moved to dismiss at the onset when they were served with the notice of appeal and before they incurred the expense of filing a brief. In short, while sanctions are deserved, Leslie's frivolous purported appeal should not have cost his adversaries much.

The appeal in GO09651 is dismissed and respondents are awarded sanctions in the amount of $500. The Judgment in GO10296 is affirmed. Respondents are entitled to costs in both matters.